

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA

3 UNITED STATES OF AMERICA,)
4)
5 Plaintiff,) DOCKET NO. 5:20-cr-00305-M-1
6 VS.)
7 CHARLES ANTHONY PITTMAN,)
8 Defendant.)
9)

10 TRANSCRIPT OF PRELIMINARY AND DETENTION HEARINGS
11 BEFORE THE HONORABLE ROBERT T. NUMBERS, II
12 TUESDAY, JUNE 16, 2020; 10:42 A.M.
13 RALEIGH, NORTH CAROLINA

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Government's

Witnesses:

Direct

Cross

Redirect

Jeff Silver

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16

EXHIBITS:MarkedReceived

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Photographs

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Photographs

12

13

ARGUMENT:

Mr. Koesters

19

Mr. Ross

23

THE COURT:

Finding

28

P R O C E E D I N G S

THE COURT: All right. The next matter on the Court's docket is United States of America versus Charles Pittman, Case No. 5:20-mj-1575.

We're here today for Mr. Pittman's detention and preliminary hearings. It's my practice in those cases to conduct both hearings at the same time unless there's an objection from counsel.

Any objection from the Government?

MR. KOESTERS: No, your Honor.

THE COURT: Any objection from the defense?

MR. ROSS: No, sir.

THE COURT: All right.

And for the record I am United States Magistrate Judge Robert Numbers.

I'd like counsel to identify themselves for the record, beginning with counsel for the United States.

MR. KOESTERS: Yes, your Honor. J. D. Koesters for the United States.

THE COURT: Good morning.

MR. ROSS: Good morning, your Honor. Joseph Ross, II on behalf of Mr. Pittman.

THE COURT: All right. Good morning, Mr. Ross.

Now Mr. Pittman is not present in the courtroom. He's appearing by videoconference due to the steps the Court is

1 taking to limit the spread of the COVID-19 virus. However, we
2 may only proceed in that manner if Mr. Pittman agrees to do so
3 after having spoken with his attorney.

4 Mr. Ross, have you spoken with Mr. Pittman and does he
5 agree to proceed by videoconference?

6 MR. ROSS: I have and he does.

7 THE COURT: All right.

8 Is that correct, Mr. Pittman?

9 THE DEFENDANT: Yes, your Honor. That's correct, sir.

10 THE COURT: All right. And Mr. Pittman, if at any
11 point during today's proceedings you lose the ability to hear
12 or see us, please do your best to let us know and we'll pause
13 to address whatever the issue is, all right?

14 THE DEFENDANT: Yes, sir, your Honor. Thank you so
15 much.

16 THE COURT: All right. And I'd also let you know that
17 we can hear anything you say there in the courtroom, or in the,
18 in the lockup. So I would recommend not saying anything that
19 you would not want the United States Attorney to hear, all
20 right?

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: All right. And if you, if you'd like to
23 speak with your attorney at any point in time, let us know and
24 we'll make the necessary arrangements, okay?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Great.

2 All right. The Government bears the burden on the
3 issue of probable cause. So I'll ask the Government to proceed
4 first today.

5 MR. KOESTERS: Yes, your Honor.

6 The Government calls Special Agent Jeff Silver.

7 JEFF SILVER, GOVERNMENT'S WITNESS, SWORN

8 THE COURTROOM DEPUTY: Thank you. So have a seat and
9 state your name for the record, please.

10 THE WITNESS: My name is Jeff, J-E-F-F; Silver,
11 spelled just like the color.

12 THE COURTROOM DEPUTY: Thank you.

13 DIRECT EXAMINATION

14 BY MR. KOESTERS:

15 Q Special Agent Silver, where do you work?

16 A I work for the Bureau of Alcohol, Tobacco, Firearms, and
17 Explosives in Fayetteville --

18 Q And what --

19 A -- North Carolina.

20 Q What do you do for ATF?

21 A I'm a special agent. I'm responsible for enforcing federal
22 firearms violations, narcotic violations, in this case statutes
23 violating the arson statute.

24 Q Do you have any history or experience with fires and
25 arson --

1 A I do.

2 Q -- crimes?

3 How so?

4 A I've been with ATF for seven years, but prior to ATF for 18
5 years I was a firefighter.

6 Q Okay.

7 A Served in various leadership positions and stuff like that.

8 Q All right.

9 In the execution of your duties as a special agent with
10 ATF, have you become familiar with the circumstances
11 surrounding the, the criminal complaint that is at hand with
12 Mr. Pittman?

13 A Yes, I have.

14 Q Can you explain to the Judge what happened?

15 A Sure.

16 On March -- sorry -- May 30, 2020 protests took place in
17 downtown Fayetteville, North Carolina. At approximately 7:15
18 p.m. the, the previously peaceful protest turned violent as
19 multiple individuals, both known and unknown, set fire to a
20 federal historic landmark known as the Market House. Market
21 House is located at 1 Market Square in Fayetteville. It was
22 built in 1832 and was entered into the National Register of
23 Historic Places on September 15, 1970.

24 An individual taking part in setting the Market House on
25 fire was later identified as Mr. Charles Anthony Pittman.

1 Various local media had covered the protest and filmed
2 Mr. Pittman standing on the second story balcony of the Market
3 House holding a red plastic gasoline container. Mr. Pittman
4 wore a black T-shirt with a black-and-white photo of Martin
5 Luther King, Jr. addressing a crowd on the National Mall.
6 Mr. Pittman also wore white earbuds which were dangling from
7 one ear down his chest and partially tucked into the neckline
8 of his shirt.

9 Mr. Pittman spread gasoline throughout the second floor of
10 the Market House. An employee who was at the Market House
11 because of the burglar alarm had gone off after protestors had
12 forced entry into the building witnessed several individuals on
13 the second floor breaking out windows and breaking furniture
14 inside. One of the individuals, who the employee later
15 identified as Mr. Pittman, went to an open window to show the
16 crowd the red gasoline container in his hands. The employee
17 watched as Mr. Pittman began to douse the floor of the second
18 story with gasoline. The employee's attention turned to the
19 other individuals inside. When the employee turned back to
20 Mr. Pittman he noticed Mr. Pittman standing next to a fire
21 right where Mr. Pitt, where he had observed Mr. Pittman pour
22 the gasoline.

23 The next day, ATF responded to the scene and I was
24 contacted by the Fayetteville Police Department Crime
25 Information Center. A crime analyst reached out to me and said

1 that she was able to locate or identify Mr. Pittman and found a
2 video on his Facebook profile. The video was recorded earlier
3 in the day on May 30th. It appeared to be Mr. Pittman driving
4 a vehicle through downtown Fayetteville. In that video
5 Mr. Pittman also wore the same black T-shirt with the black-
6 and-white photo of Martin Luther King, Jr. as well as the white
7 earbuds.

8 In the video Mr. Pittman discussed the Market House. He
9 started with saying, "I'm out here doing the scopee scopee.
10 I'm out here doing the scope, scoping out the scene." As
11 Pittman pulled up to the traffic circle with the Market House
12 in the middle, he said, "It looks like it's there for the
13 taking." As he passed by a Fayetteville Police Department
14 marked patrol car, he -- he -- Mr. Pittman said, "They know
15 it's coming. They are waiting." After discussing whether
16 slaves were sold at the Market House, Mr. Pittman declared,
17 "Maybe it should come down." As Pittman pulled away from the
18 Market House, he told Facebook Live Crowd, "We'll be back.
19 We'll be back. I'll be back, y'all, 100."

20 In the video the steering wheel of Mr. Pittman's car
21 appeared to hold a Mercedes Benz logo. I was able to query
22 North Carolina Department of Motor Vehicles and find that
23 Mr. Pittman had a 2001 Mercedes Benz E320.

24 The Market House did sustain damage as a result of the
25 fires on May 30th. Damage includes charring discoloration on

1 the exterior stairway and supportive railing; charring and
2 discoloration on the wooden stairs and supportive railing;
3 charring and discoloration to the wooden safety rail located on
4 the exterior second floor balcony; discoloration and soot on
5 the interior walls around the entrance doorway and wood stairs
6 that access the second floor; and charring and mass loss to the
7 wood flooring on the second floor.

8 I reached out to the Fayetteville Police Department to
9 determine if the City of Fayetteville does, indeed, receive
10 federal funding. I received an e-mail response from Capt.
11 Robert Spatorico from the Fayetteville Police Department and he
12 told me they do.

13 Q So going back a little bit, so the employee who was --
14 spoke -- who spoke to authorities and identified Mr. Pittman,
15 was he in the building when it actually caught fire?

16 A He responded to the building 'cause the burglar alarm went
17 off. He was the point of contact. When he got there he
18 noticed there was rooting, rioting going on, some looting, and
19 he went inside the building and there were several people
20 inside.

21 Q Okay. When he identified Mr. Pittman, how was he
22 identified? Can you explain that process?

23 A He was shown a picture of just Mr. Pittman not holding a
24 gas can and he identified him as the gentleman who went from
25 the balcony and then was looking out the second floor window to

1 the crowd down below.

2 Q Okay.

3 In terms of the news outlets and the media outlets and the
4 Facebook Live video, have you seen those images that were
5 posted, both on Mr. Pittman's Facebook profile as well as on
6 the WRAL and other news?

7 A I have.

8 Q Okay.

9 MR. KOESTERS: Your Honor, may I approach?

10 THE COURT: You may.

11 MR. KOESTERS: I'm handing him two pictures.

12 (Counsel hands pictures to the witness)

13 BY MR. KOESTERS:

14 Q Agent Silver, do you recognize those photos?

15 A I do.

16 Q What are they?

17 A The one is a, like a screenshot of when Mr. Pittman was
18 doing the, the video that he shot on Facebook and then the
19 second one is of Mr. Pittman standing looking over the, the
20 balcony from the second floor of the Market House.

21 Q When he was holding the red gas can?

22 A Right.

23 Q Okay.

24 MR. KOESTERS: Your Honor, we'd ask that the Court
25 consider these pictures as part of the Government's evidence.

1 THE COURT: Any objection?

2 MR. ROSS: No objection.

3 THE COURT: So admitted.

4 (U. S. Exhibits 1 and 2 admitted in evidence)

5 BY MR. KOESTERS:

6 Q In that Facebook Live video was Mr. Pittman driving that
7 veh, the Mercedes Benz?

8 A Yes, he was.

9 Q Okay. And you've == so you've gone to Mr. Pittman's
10 Facebook photos, Facebook page?

11 A Yes.

12 Q Is, are there privacy settings on it?

13 A It's open.

14 Q Okay. Have you seen any other postings that are relevant
15 to the fire or his intent when it comes to the fire?

16 A He had various postings on there. He had one posting of a
17 building that was burning and a, like a Bible-type quote, verse
18 quoted.

19 MR. KOESTERS: Your Honor, may I approach again?

20 THE COURT: You may.

21 (Pause)

22 (Counsel hands pictures to the witness)

23 BY MR. KOESTERS:

24 Q Special Agent Silver, do you recognize those two photos?

25 A I do.

1 Q What are those photos of?

2 A The first one was dated May 28th. It was, it was almost
3 like a repost from somebody who had posted something. The
4 original post was May 28th at 7:47 a.m. by somebody by the,
5 that goes by the name of Michael Robinson and it said, "This
6 ain't justice, man." And it's a, a picture of a burning
7 building.

8 And then Mr. Pittman posts at 1:24 p.m., same day, "Well,"
9 and then he quotes Luke 12:49 KJV, "I am come to send fire on
10 the earth; and what will I, if it be already kindled?"

11 Q Okay.

12 A And then the second is from May 31st at 12:25 p.m. It
13 says, "If you hating on looters, protesters, etc., I know you
14 ain't got a drip drop of Gangsta Soldier revolutionary in you
15 nor intelligence 'cause you would at least understand."

16 Q And those are posts from Mr. Pittman's Facebook profile?

17 A Correct.

18 Q And you confirmed through, through photos and other
19 identifiers that, that is, in fact, his Facebook profile?

20 A Yes.

21 MR. KOESTERS: Your Honor, we'd ask that you, the
22 Court consider these two photos as well as evidence.

23 THE COURT: Any objection?

24 MR. ROSS: None.

25 THE COURT: So admitted.

1 (Exhibits 3 and 4 admitted in evidence)

2 BY MR. KOESTERS:

3 Q And finally, I'd like to talk to you briefly about the
4 arrest of Mr. Pittman.

5 Were you there at the arrest of Mr. Pittman?

6 A I was.

7 Q Can you explain to the Judge what happened on the day of
8 his arrest?

9 A We identified that his vehicle was sitting at the
10 WoodSprings Suites, which is a extended type stay hotel in
11 Fayetteville. He had pulled out of the parking spot that he
12 was parked in. So we -- I, I was using the Fayetteville Police
13 Department to assist me with his apprehension and they try not
14 to conduct vehicle stops in case the vehicle, vehicle attempts
15 to flee.

16 So we surveilled Mr. Pittman drive pretty much around the
17 whole City of Fayetteville and then he ended up back at the
18 WoodSprings Suites, which is, when he pulled into the parking
19 spot, is when we conducted a traffic stop from multiple angles
20 to ensure he was apprehended.

21 Q All right. So he, he was actually driving around during
22 the day throughout Fayetteville --

23 A Yes.

24 Q -- on the day of his arrest?

25 A Yes.

1 Q Okay. And he was staying at that hotel?

2 A Yes.

3 Q Okay. Thank you.

4 MR. KOESTERS: No further questions, your Honor.

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION

7 BY MR. ROSS:

8 Q The Market House, that's that building that's kind of in
9 the circle in Fayetteville?

10 A Correct.

11 Q Where slaves were sold?

12 MR. KOESTERS: Objection, your Honor. Relevance to
13 this.

14 THE COURT: Sustained.

15 BY MR. ROSS:

16 Q So what is this building?

17 A I know the square and the building itself to be a historic
18 monument and that's all I really know about it.

19 Q Can you tell me of -- who was the person you spoke to from
20 Fayetteville about the funding that they received from the
21 Government?

22 A Right. Captain Robert Spatorico from the Fayetteville
23 Police Department.

24 Q How much money did Fayetteville receive from the
25 Government?

1 A In fiscal year 2019-2020 it was in excess of \$31 million.

2 Q And how much of that in that \$31 million was earmarked for
3 the Market House?

4 A I'm not sure.

5 Q Well, can you tell us it was a dollar?

6 A I can't tell you anything about it 'cause I don't know.

7 Q So you can't tell us if any funds actually went to the
8 Market House, can you?

9 A No, but it went to the City of Fayetteville.

10 Q Okay. The Market House is not being leased to the Federal
11 Government, is that correct?

12 A Excuse me?

13 Q The Market House is not being leased to the Federal
14 Government, is that correct?

15 A Not, not to my knowledge.

16 Q It's not being leased to a department agency of the, the
17 Federal Government, is it?

18 A Not that I know of.

19 Q And did you find anything to show that the Market House was
20 given earmarks by Congress for financial assistance?

21 A No.

22 Q No. And even though I asked you if it was leased by the
23 Federal Government, it's definitely not owned by the Federal
24 Government, is that correct?

25 A Correct.

1 Q Thank you.

2 MR. ROSS: Nothing further.

3 THE COURT: Any redirect?

4 MR. KOESTERS: Briefly, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. KOESTERS:

7 Q So the Market House, you said there are employees who are
8 responsible for maintaining the security of it?

9 A They have, from what I understand, a staff of like three
10 people that float between a couple of the historic places in
11 the City of Fayetteville.

12 Q Okay. And who, who employs those individuals?

13 A The City of Fayetteville.

14 Q Okay. And in terms of its maintenance, its care, cleaning
15 of the area around it, who's responsible for that?

16 A I believe the City of Fayetteville is, yeah.

17 Q Okay. And do the employees of the City of Fayetteville do,
18 do that work?

19 A I'm assuming so.

20 Q Okay.

21 MR. KOESTERS: No further questions, your Honor.

22 RECROSS EXAMINATION

23 BY MR. ROSS:

24 Q I, I just want to make sure. All those people that you
25 just talked about, can you earmark any of the money which they

1 are paid it's from the Federal Government?

2 A I have no idea how the City of Fayetteville divvies their
3 money up.

4 Q Thank you.

5 MR. ROSS: Nothing further.

6 THE COURT: Thank you, sir. You may step down.

7 Anything further from the Government?

8 MR. KOESTERS: No, your Honor. Not at this time.

9 THE COURT: Anything from the defense today?

10 MR. ROSS: Yeah. I, I'm just going to present by
11 proffer --

12 THE COURT: All right.

13 MR. ROSS: -- a third-party custodian.

14 I present to the Court Wanda Anderson, who lives at
15 731 Commerce Street in Fayetteville, North Carolina. She is --

16 Will you please stand?

17 (Ms. Anderson complies)

18 THE COURT: She is present.

19 You may have a seat.

20 She is the mother of Mr. Pittman. She has -- and he
21 has lived here most of his life other than the times that he's
22 been in the military or has worked. She is willing to allow
23 him to stay at her house, even though he is married, during the
24 outcome of this case. She is willing to make sure he shows up
25 for court, which is a big ask considering his background. She

1 is also willing to allow electronic monitoring in the household
2 as well. She will ensure that he continues to work if the
3 Court allows and she will make sure that he is able to meet
4 with his attorney, which would be me.

5 With that, that's the evidence on which we show.

6 She has no guns. She has no drugs. She's not going
7 to let, let anything illegal in her house.

8 Thank you.

9 THE COURT: Thank you.

10 MR. KOESTERS: Your Honor, I do have a few questions
11 for Ms. Anderson regarding conditions in which they are living.

12 Mr. Pittman claims that he had been living in --
13 sorry.

14 THE COURT: That's all right.

15 MR. KOESTERS: Claims that he, he had been living
16 there prior to this, but the officers and intelligence from the
17 officers have said that he was actually living in a hotel.

18 So I'm just trying to get some clarification on where
19 he's been during this time.

20 MR. ROSS: Your Honor, that's not relevant to her
21 being a third-party custodian. She is willing to be a third-
22 party custodian at this point. I think, more or less, they're
23 just doing fishing for their purposes of preparing their case.

24 MR. KOESTERS: Your Honor, at this point if -- if --
25 if you'd not like us to put it on, we can just proffer the fact

1 that, that the officers and the special agents from ATF were
2 able to identify that despite Mr. Pittman's assertions in the
3 PSR that he had been living with his mother at this residence,
4 he, in fact, had been living in a hotel.

5 THE COURT: I'll note that. Thank you.

6 MR. KOESTERS: Thank you, your Honor.

7 THE COURT: All right. Is there argument from the
8 Government?

9 MR. KOESTERS: Your Honor, in terms of the probable
10 cause under 18 U.S.C. -- sorry. I apologize -- 844(f)(1), in
11 this there, there must be that the defendant maliciously
12 damaged -- and I apologize. I'm standing up again.

13 THE COURT: That's all right. It's a hard habit to
14 get out of.

15 MR. KOESTERS: Poor habit.

16 -- that he damaged or destroyed a building by fire,
17 explosive, that that building was owned, possessed, or, and
18 otherwise run by a entity or organization that is receiving
19 federal funding. How that organization disburses, there,
20 there's pretty significant case law on this saying, you know,
21 how they disburse those funds and the amount of actually
22 earmarking those funds toward the maintenance and care of that
23 building is not relevant. It is more of whether that
24 organization is receiving funding that is then they are given
25 the autonomy to be able to distribute the funds as they see.

1 In this, in this instance, your Honor, Fayette, City of
2 Fayetteville employs all of the individuals who maintain the
3 Market House. They were able to receive -- they -- Special
4 Agent Silver was able to confirm the funding. They were also
5 able to confirm the employees who maintain that area or, and
6 watch over that and maintain the security of it are employed by
7 the City of Fayetteville. We believe there is significant
8 probable cause to say that this is, clearly, 844(f)(1) and
9 (f)(2) and (2) have been violated in this instance.

10 In terms of the detention, looking at 18 U.S.C. 3142,
11 first, the nature and circumstances of the offense. This was
12 clearly a premeditated plan on the part of Mr. Pittman. On May
13 28th he is justifying actions of setting a building on fire
14 when people are posting that, "This is not justice." No doubt
15 emotions were high during this time, but he is clearly
16 signaling what he believes is potentially right and what is
17 potentially going to come. And then just two days later, on
18 May 30th, before the protest had begun, the peaceful protest,
19 Mr. Pittman is driving around and, and we were actually able to
20 confirm with Probation that during this time Mr. Pittman is
21 driving around while his license is revoked.

22 So he is driving through the City of Fayetteville and
23 saying that he is out there to "scope the scene." And now when
24 he sees the Market House he says, "It's there for the taking."
25 He sees a Fayetteville police officer's car there and he says,

1 "They're ready for it. They know we're coming," and then he
2 discusses whether, that he's going to take it down, whether it
3 "should come down." He clearly was premeditating that.

4 And then he, he went on to even mock the peaceful
5 protesters saying, "What are they going to do? Mildew and
6 barbecue?" He had the premeditated plan to go there with a
7 gasoline can and set it on fire, as the employee saw. This
8 wasn't somebody who just kind of got caught in the group
9 thinker, emotions got the best of them as others were leading
10 the charge. Mr. Pittman went there with a plan, a plan that he
11 openly and notoriously discussed seeking the attention of it,
12 putting it on a Facebook Live video.

13 When we look against the weight of the evidence, news
14 cameras were all over the place there picking up Mr. Pittman
15 walking in and out of it and even holding up that red gasoline
16 can that the employee later identified him with. The -- as we
17 said, the employee sees his face and can say, "Hey, that's the
18 guy with the red gas can." He didn't even have to see him with
19 a picture, red gas can.

20 And, and I think most importantly is, you know, when
21 we look at the evidence the defendant himself put him in, put
22 the most weight of evidence on himself when he's discussing his
23 plans. He's justifying his actions through his Facebook post.

24 The history and characteristics of, of him, I think
25 what stands out here and what everyone has to take note of is

1 his record of court appearances. He has, as I counted through
2 the PSR, six -- six -- a history of six different court
3 appearances in, two in Greenville, South Carolina, two in
4 Alabama, one in Georgia, and one in New Mexico. Most of these
5 are stemming from driving while license is revoked and other
6 various traffic instances, but one also includes marijuana.
7 And then when you look in his PSR and he discussed his domestic
8 travel, he puts himself in each one of these states. He was
9 there.

10 Those two things connect, you know. One time if you
11 were out of state, you're traveling through a state and you're
12 pulled over and you're arrested for something and you miss your
13 court appearance, that might be a mistake. Two times, it might
14 just be, you know, a lack of care or a bad coincidence. Six
15 times is a pattern. It's a pattern of somebody who does not
16 care and does not feel that they are accountable when they are
17 caught by the law.

18 And also, your Honor, to take note of the driving
19 while license revoked, another step that the State has taken to
20 put constrains [sic] on him that he just readily ignores, so
21 much so that he was ignoring it on the day of this incident and
22 then he was ignoring it again on the day of his arrest.

23 Now when you put all of these factors together,
24 ultimately what it shows is that Mr. Pittman just feels that he
25 does not have to account to him, to the law or to what this

1 Court will do and there's no reason to believe that he's going
2 to change. He clearly openly and notoriously sought the
3 attention and told everyone what he was going to do 'cause he
4 didn't feel like anything was going to hold him accountable
5 when he set a building on fire with people inside of it. That
6 type of mindset poses both a danger of a risk of flight, him
7 not failing to, him failing to appear, but also a danger to the
8 community when he feels justified in his actions of setting a
9 building on fire and putting people's lives in danger.

10 And for those reasons, your Honor, we'd ask that you
11 continue his detention.

12 THE COURT: Thank you.

13 Mr. Ross?

14 MR. ROSS: May I approach, your Honor?

15 THE COURT: You may.

16 (Counsel hands document to the Court)

17 THE COURT: Thank you.

18 MR. ROSS: Your Honor, I'm going to deal with probable
19 cause. I've just given you the statute. I highlighted the
20 area where I cross-examined. The Government has failed to meet
21 that, even at this stage. And they don't need a, a lot. They
22 need something. They need something more than just saying the
23 City receives funds. They can't show not even a penny that
24 actually goes to the Market House. They can't show a penny
25 that goes to any of the three people that work there. They

1 can't even show anything to show that there's a lease, a
2 payment at any point of time. Judge, this is a state matter.
3 This is the Executive Branch overreach by any means necessary.

4 I grew up in Philadelphia, a city that has many
5 monuments, including the Liberty Bell, Independence Mall.
6 Independence Mall is obviously a federal entity. Anything that
7 happens on there, I wouldn't be here talking about this, but
8 "Mr. Ross, you're talking about Philadelphia." Liberty Bell,
9 either. We leave here talking about whether it was a federal,
10 whether they can prove their case.

11 But I tell you how they could have proved this case,
12 if this was Fort Bragg, if this was even the sign on Fort
13 Bragg. That's federal property. That's property which the
14 Federal Government owns, not here.

15 If that's the matter, I don't care who lives in
16 Fayetteville, whether it's one of our investigators, whether
17 it's Special Agent Silver, or any, anybody else there. Because
18 Fayetteville receives money? Oh, no. That's not enough in
19 this matter. The Government has failed in their, such a small
20 burden at this point. Now that's the probable cause.

21 THE COURT: Well, let's -- I -- I -- let's focus on
22 that for a minute 'cause I think I, I think it's important and
23 I, I mean, it's an interesting argument 'cause it gets to the
24 text of the statute and it's a statute we don't deal with very
25 often, I guess fortunately.

1 I've got it in front of me on my screen and I've got
2 what you gave me, Mr. Ross.

3 MR. ROSS: Yes, sir.

4 THE COURT: I mean, it seems to say:

5 "Whoever maliciously damages or destroys, or attempts
6 to damage or destroy, by means of fire," which is what
7 we've got here, "any building, vehicle, or other
8 personal or real property in whole or in part owned or
9 possessed by, or leased to, the U. S., or any
10 department or agency thereof, or any institution or
11 organization receiving Federal financial assistance."

12 MR. ROSS: Yes, sir.

13 THE COURT: So what -- so it doesn't have to be owned
14 by the U. S. It doesn't have to be the Liberty Bell and all
15 that stuff. It can be property owned by an "institution or
16 organization receiving Federal financial assistance."

17 Why do you say they haven't met that portion of this
18 statute?

19 MR. ROSS: They can't -- there's a couple reasons.

20 No. 1, you need to earmark a certain thing to show the
21 interstate nexus. I mean, on guns it's easy. No guns are made
22 in, in, in, in, in North Carolina. No ammunition is made in
23 North Carolina. They can't show -- nothing that shows that
24 federal money went to that particular building. If that's the
25 case, everything in Fayetteville, everything in Fayetteville

1 should come into federal court and I can't imagine that anybody
2 intended that anything that happens in a city and a state
3 should come into Federal Government.

4 Look, the Government may go back and be able to get an
5 indictment from a grand jury, which they might, but at this
6 point, Judge, please don't, don't sign off on this. The
7 statute says what it says and you heard the special agent
8 testify that he cannot tell this Court where any of those funds
9 went directly to any of the people working there or to that
10 building. This is a state matter.

11 MR. KOESTERS: Your Honor?

12 THE COURT: I'll, I'll hear from the Government on
13 this.

14 MR. KOESTERS: The plain text of the statute does not
15 require any type of earmarking. Any -- just a -- the basic
16 legal research on this -- and I apologize. If, if we need to
17 take a ten-minute recess for us to bring some of the case law
18 to the Court's attention, we can do that -- but the courts have
19 interpreted that the exact same way. This is truly the musings
20 of Mr. Ross at this point, attempting to add an additional
21 element into a statute, and it's just not there, especially
22 when we're looking at probable cause in this issue, your Honor.

23 The Government has absolutely met its burden. The
24 clear language of the statute supports this. Any type of legal
25 research into this issue also supports that.

1 THE COURT: Well, on probable cause, I'm going to take
2 that portion of this under advisement and I'll go do my own
3 research and figure out what the right answer is on that point.

4 But Mr. Ross, you want to be heard on, on detention as
5 well?

6 MR. ROSS: Your Honor, I'm going to ask that he be
7 released to the custody of his mother to live at that address.
8 If the Court so chooses, to be placed on electronic monitoring,
9 for him not to drive a car, and with all speed for him to take
10 care of these matters that he has open.

11 I do believe in most jurisdictions that the state
12 courts are closed at this time, but whatever needs to be done
13 our office will help him get in contact with the different
14 agencies and the different states where he has these open
15 traffic violations, that we will make sure that his case is no
16 longer being placed in warrant status.

17 That is what we would ask the Court to consider and
18 ask the Court to release him.

19 Thank you.

20 THE COURT: All right. I'm going to take a brief
21 recess to consider this matter. I will then issue a
22 conditional ruling on detention. I'll go do the work that I
23 need to do on probable cause and, and issue an order on that.

24 So we'll be in a brief recess.

25 MR. ROSS: Thank you.

1 COURT SECURITY OFFICER: All rise. Court will be in
2 recess.

3 (Recess from 11:16 a.m., until 11:26 a.m.)

4 AFTER RECESS

5 (Call to Order of the Court)

6 THE COURT: All right.

7 So I've considered the credible information we've
8 received here today, including the Pretrial Services report,
9 and make the following findings:

10 This does not appear to be a case in which the
11 rebuttable presumption in favor of detention would apply. So I
12 will move to the Bail Reform Act factors, the nature and
13 circumstances of the offense the defendant is charged with, the
14 weight of the evidence against the defendant, his history and
15 characteristics, and the nature and seriousness of the risk
16 posed to the community by the defendant's release.

17 After considering those factors, the Court has
18 determined that if there's probable cause that support these
19 allegations, it is appropriate to detain the defendant pending
20 further proceedings.

21 Here, we have a situation where the defendant is
22 charged with a very serious and dangerous crime. It, it
23 appears this is a very premeditated offense. This was not one
24 that was a spur-of-the-moment, caught up by the passions of the
25 moment, or of the crowd. This, from the Facebook Live video

1 and the defendant's presence at the Market House with a, a very
2 large, probably a five-gallon gas container, it shows that this
3 was something that was thought through well in advance and
4 the -- either the -- the potential dangerousness of that was
5 either disregarded or not considered by the defendant and it's,
6 it's a sad commentary on our society, but the issues that, you
7 know, preceded or underlie what brought the defendant to the
8 Market House that day do not seem to be going away anytime
9 soon. It continues to be an issue our society is wrestling
10 with and thus, if he was so moved to engage in this type of
11 dangerous and premeditated activity, it's difficult for the
12 Court to believe that in the future he would not be so moved
13 again if we are so unfortunate as to have more instances like
14 those that have brought us here to this point in our nation's
15 history.

16 Additionally, the defendant does have numerous
17 failures to appear. It appears to be an ongoing issue with the
18 defendant, that he's failed to appear at criminal proceedings.
19 In this case, he's facing much more serious penalties than he's
20 ever faced in the past. He's facing a mandatory minimum of
21 five years on the 844(f)(1) charge and a mandatory minimum of
22 seven years on the 844(f)(2) charge. And so it provides the
23 defendant with a substantial incentive to flee and his record
24 indicates that he has no issues doing so.

25 In light of all of this, I don't believe that the

1 third-party custodian that's been presented is going to be
2 sufficient to assure the defendant's appearance and the safety
3 of any other person and the community pending the outcome of
4 the case. It appears by the defendant's own admission that he
5 was living with the proposed third-party custodian at the time
6 he engaged in the conduct that's at issue here. And so that,
7 obviously, didn't deter him before. I don't see why it would
8 deter him in the future from doing so.

9 So based upon all those factors, I'm going to find the
10 Government has shown by a preponderance of the evidence that
11 there are no conditions I could impose that would reasonably
12 assure his appearance at future proceedings and that it's shown
13 by clear and convincing evidence that there are no conditions I
14 can impose that would reasonably assure the safety of any
15 person and the community pending the outcome of the case and,
16 therefore, the motion for detention's granted, obviously
17 conditional on my ruling on probable cause. If I find probable
18 cause, the defendant will be, remain in custody. If I find
19 that there's no probable cause, the charges will be dismissed
20 and the defendant would be released from custody.

21 Anything further from the Government?

22 MR. KOESTERS: No, your Honor.

23 THE COURT: Anything further from defense?

24 MR. ROSS: Your Honor, just, just for sake of trying
25 to figure out everything, do you think it'll be sometime this

1 week you'll make a decision or --

2 THE COURT: Yes. I mean, I would hope to do it today.

3 MR. ROSS: Okay.

4 THE COURT: If not today, then, then I think -- I
5 don't have anything on my docket tomorrow. So I would
6 definitely assume by the end of the day today, tomorrow I'll
7 get it done.

8 MR. ROSS: All right.

9 THE COURT: So. All right.

10 All right.

11 MR. ROSS: Thank you.

12 THE COURT: Anything further?

13 MR. KOESTERS: No thank you.

14 THE COURT: All right. That concludes the proceedings
15 for the defendant. He's remanded to the custody of the
16 Marshals.

17 And we'll be in recess.

18 COURT SECURITY OFFICER: All rise. Court will be in
19 recess.

20 (Proceedings concluded at 11:30 a.m.)

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Dated this 7th day of February, 2023.

/s/ JANICE RUSSELL
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